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Staff Director

Subcommittee on Interior

House Committee on Oversight and Government Reform

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Re: Written testimony for the Committee

My name is Todd Hennis. I am the President of San Juan Corporation of Colorado, the owner of the Gold King Mine, and I would like to thank the Committee for giving me the opportunity to submit testimony regarding EPA's Animas Spill on August 5, 2015

Specifically, I will describe the circumstances leading up to the Gold King Mine spill, my experience with the EPA before and directly following the incident, and the potential for a much more catastrophic incident in the future if a permanent solution addressing root causes is not implemented. In addition, I've included my support for responsible regulation of the mining industry and the importance of domestic mining to the United States.

First, there are three mines that are critical to this testimony: the Gold King Mine, the Mogul Mine, and the Sunnyside Mine.

San Juan Corp owns both the Gold King Mine and the adjacent Mogul Mine. I have never mined either of those mines. The only work I've performed at the Gold King Mine has been at the explicit direction of either the Colorado Department of Reclamation, Mining and Safety, or the EPA to grade roads or restore ditching. San Juan Corp. has never worked on the Gold King portal.

Both of these mines are directly connected to the neighboring Sunnyside Mine owned by Sunnyside Gold Corp which is now a subsidiary Kinross Gold of Canada.

The root cause of the Animas Spill was approved by regulators: The Sunnyside Mine

In 1978, mining operations in the Sunnyside Mine led to the collapse of an alpine lake into the Sunnyside Mine workings. This collapse caused 500 million gallons of water to rush out the American Tunnel of the Sunnyside Mine over 3 days. The incident led Sunnyside to treat the water that continued to flow from the lake and water created by general ground seepage in the Sunnyside Mine and which then flowed out the mouth of the American Tunnel.

In 1996, Sunnyside and the State of Colorado entered into a Consent Agreement giving Sunnyside permission to place concrete plugs, or "bulkheads," in the American Tunnel and a few other parts of the Sunnyside Mine in exchange for freedom from potential future responsibilities / liabilities related to the bulkheads. In addition the Agreement required Sunnyside to perform other cleanup projects in the San Juan Mountains. This was pollution trading in all senses of the term. The U.S. Solicitor General Office was copied on the settlement documents, and EPA was fully cognizant of the settlement.

At the time of the Agreement, the Gold King Mine was a "dry" mine, which is to say, there was little to no water draining out of its portal.

First evidence of looming disaster and regulator disinterest: The Mogul Mine

In 2000, a large flow of water started coming out of the Mogul Mine, and a U.S. Geological Survey person informed me that the water contained a very high level of fluorine, an element only found in the discharge water from the Sunnyside Mine.

In 2001, Mr. David Holm, the director of the Colorado Water Quality Control Division (WQCD, which had negotiated the mine bulkheading plan with Sunnyside Gold Corp.) threatened me with an enforcement action over the Mogul Mine discharge. I informed Mr. Holm that the water was from Sunnyside, and that he and Sunnyside needed to find a solution to the problem. Mr. Holm told me during the second telephone call that he had persuaded Sunnyside out of the goodness of its heart to pay for bulkheading the Mogul Mine. I informed Mr. Holm that I would not agree to this without compensation for the loss of the Mogul Mine resources due to the bulkheading. Mr. Holm continued to threaten me with an enforcement action.

By September 2001, the pressure from WQCD became so intense that I went back into the Mogul Mine to prove where the water flow was coming from, and I had a near fatality attempting to enter the Mine. Later that month, I and a Colorado Division of Mining and Geology employee entered the mine successfully. We determined the last 300 feet of the accessible part of the main drift had a large volume of water flowing down from the connection with Sunnyside, and the Mine floor was deep in orange metal precipitates. This 300 feet of drift had been dry and sandy in 1996.

I then investigated historical records on the Mogul Mine and found two large World War II era exploration drill holes that connected the Sunnyside Mine to the Mogul Mine property on a U.S. Bureau of Mines map. However, Sunnyside denied any knowledge of the two drill holes. I also found a Simons Hydrosearch study commissioned by Sunnyside to justify bulkheading of the American Tunnel that stated a large flow of water would occur if there was an unknown direct connection through faults or other connections from the Sunnyside Mine to the Mogul Mine.

By late 2001, it was clear that the Sunnyside bulkheading had failed and that the problem would only get worse as the level of the water pool rose in the Sunnyside Mine. My company received no help, encouragement or action from either the EPA or the State of Colorado in this matter. Rather I continued to receive threats of an enforcement action by the State against the water coming from the Mogul Mine portal.

Consequently, San Juan Corp. filed a lawsuit in San Juan District Court alleging water trespass by Sunnyside into the Mogul property. My attorney asked me to contact the EPA and ask them to join this lawsuit. I telephoned Ms. Carole Russell of EPA Region 8 to ask the EPA to join the lawsuit and avert further environmental damage. Ms. Russell informed me that EPA would not consider joining the lawsuit under any circumstances. I told Ms. Russell that I would send a letter to her requesting EPA join the lawsuit. Ms. Russell told me explicitly "if you send that letter, I will make you truly sorry." In the face of this threat, I obviously did not dare send the letter.

Being a small company, I did not have the resources to pursue a lawsuit against one of the largest gold mining companies of the world (at that time Echo Bay Mines of Canada, acquired by Kinross Gold in 2004). I had to take the settlement proposed by Colorado WQCD and Sunnyside Gold Corp which included bulkheading the Mogul Mine.

Since then, I have been raising the alarm about the growing danger created by the Sunnyside bulkheads as the water backup in the mountain continues to rise. This rising water is increasing the pressure on the bulkheads and is now much higher than assumed in their original design.

I have raised this issue in direct calls to Sunnyside owner Kinross. I have also written and distributed documents, made presentations, and participated actively in public meetings. These meetings have been attended by representatives of Kinross, and by a wide assortment of regulatory agencies, such as: the EPA, Bureau of Land Management, Colorado Department of Reclamation, Mining and Safety, and Colorado Department of Public Health and Environment.

State of Colorado signs away its rights to regulatory enforcement against Sunnyside

By 2002 the last bulkhead was installed in the American Tunnel, and in 2003 the Consent Decree issued by the State of Colorado was vacated. In vacating the Decree, the State signed away its rights to all future regulatory enforcement against Sunnyside.

EPA monitors situation

After the Consent Decree was vacated, the EPA monitored the situation by taking water samples. They also evaluated it for Superfund status, but it failed to meet the criteria. At any point in time, they could have pursued non-Superfund measures against Sunnyside Gold Corp and its owners, but they did not. I can only assume they were more interested in working under a Superfund designation than they were in solving the problem quickly.

Conditions worsen: The Gold King Mine

In 2005, I became the owner of the Gold King Mine through the resolution of a bad loan. The Gold King was well above the advertised maximum height of the Sunnyside Mine pool and should have been “dry” with negligible discharge of 7 gallons per minute. What I didn’t know was that the Gold King discharge had increased to 40 gallons a minute. From that point in time until the EPA started work on the Gold King in 2014, the water flows steadily increased to approximately 250 gallons per minute of heavily metal laden water.

The metal content of this water show that the water is coming from the Sunnyside. In an estimated 98% of the mineralization in the Gold King Mine there is 1% or less base metal content. However, the water flowing from the Gold King portal was very high in the base metals zinc, cadmium, lead, copper and manganese. These are the metals that are present in very large quantities in the Sunnyside Mine.

In addition, maps and public documents tell us that Sunnyside Gold Corp mined the 2150 vein of the Sunnyside Mine into the Gold King property in 1989-1991. These mine workings were left open and are now filled with the Sunnyside Mine pool water, which is now flowing either by faults, fissures, or drill holes. There are 29 drill holes from the Sunnyside workings across the Gold King property or from the end of the Gold King 7 level towards the Sunnyside Mine. In addition, the end of the Gold King 7 level is only approximately 1,000 feet from the Sunnyside 2150 vein workings. The fact is that the mountain that hosts the Sunnyside, Mogul, and Gold King Mines is a "swiss cheese" of faults, fissures, fractures and exploration drill holes.

The EPA uses coercion to gain access to the Gold King

In 2011 the EPA requested access to the Mogul, Gold King, and other properties that I own in the area. I refused for fear they would create a pollution disaster. This worry came from the fact that the EPA had illegally dumped thousands of tons of highly reactive mine dump material down the shaft of a mine I own in Leadville, CO. This material caused the metal readings in the water flowing through the Leadville Drainage Tunnel to skyrocket.

On May 12, 2011 the EPA issued "Administrative Order Directing Compliance with Request for Access, CERCLA Docket No.: CERCLA-08-2011-0008" against Todd C. Hennis, San Juan Corp., and Salem Minerals Inc. The Order called for fines up to \$37,500 per day as long as I refused them access.

I had to surrender and grant access to the properties to the EPA, together with EPA taking environmental and operational management of the sites. The Access Agreement has been renewed at least twice and expires December 2015. I now have approximately ten settling ponds created by the EPA over three locations on my lands, with unknown environmental consequences.

EPA work begins in earnest on the Gold King and disaster strikes

In 2014, the EPA started to work on the Gold King portal and then they stopped work due to the coming of winter. The EPA placed a very large amount of rock and dirt over the Gold King portal to prevent a "blowout" during the winter. I believe they blocked off the discharge pipes at that time, which caused a large amount of water to back up behind the backfill.

When the EPA resumed their work in August 2015 the backed up water blew out, sending 3 million gallons of metal laden, orange water downstream in a rush.

While the emergency team on site has been doing a good job addressing the blowout, the situation should never have occurred in the first place. Contrary to previous EPA testimony before another Congressional Committee, the blowout was not an act of nature. It was an act of man, specifically created by the actions of the EPA at the Gold King site.

Current situation

The Gold King water flows now appear to have increased to 600 gallons a minute as a result of the blowout. I believe the sudden release of the water from the Gold King portal caused a flow to further open a fault connecting the Sunnyside and Gold King workings, by eroding the clay in the fault and increasing the flow directly from the Sunnyside Mine into the Gold King 7 level workings.

As the EPA Access Agreement expires in December, 2015, I am attempting to negotiate a full settlement agreement with the EPA to lease them the latest site of the settling ponds to treat Gold King and other potential waters for a period of time.

In addition, I see increasing environmental danger caused by the bulkheading of the Sunnyside Mine. The waters of the Sunnyside Mine appear to have risen to at least twice the height of the mine pool for which the Sunnyside bulkheads were originally engineered. I am very fearful that the estimated billions of gallons of heavily metal laden waters impounded behind the bulkheads could be released by a bulkhead failure due to a seismic event or just from hydrostatic pressure. If such a release happens, the water volumes could be on the order of 1000 times greater than the water released by the EPA at the Gold King. The effects on the Animas, San Juan and Colorado River systems would be catastrophic.

The solution

The only solution to the environmental problems created in the American Tunnel of the Sunnyside Mine is for the EPA, the State of Colorado, and Kinross to admit that bulkheading the American Tunnel has been a failure. They need to carefully draw down the Sunnyside Mine pool and to treat the water resulting from the drawdown.

In addition, a great deal can be done to prevent water inflows into the Sunnyside Mine, using common industry practices in use since the 1990s.

In summary

The EPA has known all of this from 2001-2002. Instead, they allowed the State of Colorado to enter into a pollution trading settlement with Sunnyside Gold Corp., and they allowed this situation to steadily worsen over time. I almost lost my life due to the waters from the Sunnyside Mine Pool, and EPA was lucky no one got killed in the August 5th blowout they triggered. We might not be so lucky when the bulkheads

ultimately fail at the American Tunnel. The damage to the Colorado River system and the downstream users has been catastrophic.

In closing, my perspective on regulation

In spite of this story of disaster, I am a believer in responsible enforcement of responsible regulations. More regulation would not have prevented the Gold King blowout. Proper action by either the State of Colorado or the EPA against Sunnyside Gold Corp. would have prevented the situation in the first place.

I include this perspective in my statement because it is imperative that the United States retain access to its strategic mineral resources. Today, American industry is heavily dependent on strategic metals imports, including the green tech, high tech, and national defense industries. To make matters worse, most of those imports come from China. We can't afford to shut down mining in this country. The Gold King may contain the largest, most accessible source of the metal tellurium in the United States. Tellurium is the fifth rarest metal on the planet and is the critical element for thin film solar panels and other applications.

This concludes my testimony as president of San Juan Corporation, owner of the Gold King and Mogul Mines. Dated September 11, 2015.

For San Juan Corp.,

Todd C. Hennis, Pres.